

No. 22-15514

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ILIIJA MATUSKO
Claimant-Appellant,

v.

APPROXIMATELY 69,370 BITCOIN (BTC), BITCOIN GOLD
(BTG) BITCOIN SV (BSV) AND BITCOIN CASH (BCH),
Defendant.

On Appeal from the United States District Court
for the Northern District of California (San Francisco)
No. 3:20-cv-07811-RS
Hon. Chief Judge Richard Seeborg

**CLAIMANT-APPELLANT'S UNOPPOSED MOTION TO CONSOLIDATE
APPEALS**

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Attorney for Appellant
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I.

INTRODUCTION

Pursuant to Rule 3(b)(2) of the Federal Rules of Appellate Procedure, Claimant-Appellant Ilija Matusko (“Mr. Matusko”) moves this Court for an order (1) consolidating this appeal with the newly-filed appeal Case No. 22-16349, involving the same parties and arising out of the same district court proceedings, (2) directing that Case Nos. 22-16349 and 22-15514 be jointly briefed, with Mr. Matusko’s opening brief due on its current due date of November 9, 2022, and (3) vacating the briefing schedule in this matter, Case No. 22-15514. Consolidation of the appeals and briefing should be granted to promote judicial economy.

II.

BACKGROUND

This appeal concerns a civil forfeiture action wherein the Government seized approximately 69,370.22491543 Bitcoin, Bitcoin Gold, Bitcoin SV, and Bitcoin Cash (together, the “Bitcoin”). District Ct. Dkt. No. 8 (amended complaint). The appeal arises out of the district court’s March 25, 2022, order granting the Government’s motion to strike Mr. Matusko’s claim to the Bitcoin for lack of standing. District Ct. Dkt. No. 104 (order). Mr. Matusko filed a Notice of Appeal from that order on April 7, 2022. District Ct. Dkt. No. 108.

On April 12, 2022, this Court issued an Order to Show Cause directing Mr.

Matusko to explain why the appeal should not be dismissed for lack of jurisdiction. Dkt. No. 2. Mr. Matusko filed a response, and the Government replied. Dkt. Nos. 10, 11. On July 1, 2022, this Court issued an order that discharged the show-cause order and directed briefing to proceed. Dkt. No. 12. Mr. Matusko's opening brief is currently due on September 30, 2022. Dkt. No. 14.

On August 16, 2022, the district court entered final judgment awarding the Bitcoin to the Government. District Ct. Dkt. No. 127.

On September 8, 2022, Mr. Matusko appealed the final judgment. District Ct. Dkt. No. 129. This Court docketed Mr. Matusko's appeal from the final judgment as a new case, Case No. 22-16349, which set a due date of November 9, 2022 for Mr. Matusko's opening brief. Dkt. No. 1 (Case No. 22-16349).

On September 15, 2022, the associate attorney for Mr. Matusko's counsel contacted counsel of the Government and proposed moving the Court to consolidate the two appeals and vacate the briefing schedule in Case. No. 22-15514 so that the appeals may be jointly briefed. Dec. of Alexander J. Johnson In Support of Unopposed Motion ¶ 2 (attached). The Government informed Mr. Matusko's counsel that it would not oppose the motion. *Id.* ¶ 2, 3.

III.

CONSOLIDATION IS WARRANTED

This Court should consolidate Mr. Matusko's two appeals from the same

district court action to avoid duplicative briefing and the potential for conflicting decisions. “When the parties have filed separate timely notice of appeal, the appeals may be joined or consolidated by the court of appeals.” Fed. R. App. P. 3(b)(2). This rule was adopted to encourage consolidation of appeals whenever feasible. *See* 1967 Advisory Committee Notes to Rule 3.

Consolidation should be ordered when it is “appropriate and in the interest of justice.” *See United States v. Washington*, 573 F.2d 1121, 1123 (9th Cir. 1978). When the appellate court will have to review the same issues in separate appeals, consolidation furthers judicial economy. *See California v. Mesa*, 813 F.2d 960, 961 n. 1 (9th Cir. 1987) (consolidating two cases on appeal because “they raise the same legal issues”). Here, briefing in each appeal will address the same issues: (1) how the district court erred when it struck Mr. Matusko’s claim for lack of standing. Unless they are consolidated, these appeals will require two separate panels of this Court to review and analyze the same record and briefing and render decision on the same issues presented. Consolidation would eliminate redundancy of effort by this Court and would prevent separate appellate panels from drawing different and possibly conflicting conclusions.

IV.

CONCLUSION

For the foregoing reasons, this appeal and briefing thereon should be

consolidated with Case No. 22-16349, and the briefing schedule in this appeal should be vacated.

DATED: September 15, 2022 KUGELMAN LAW, P.C.

By: /s/ Alexander H. Kugelman
ALEXANDER H. KUGELMAN
Attorney for Appellant
Ilija Matusko

No. 22-15514

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**DECLARATION OF ALEXANDER J. JOHNSON IN SUPPORT OF
CLAIMANT-APPELLANT'S UNOPPOSED MOTION TO CONSOLIDATE
APPEALS**

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Attorney for Appellant
Ilija Matusko

I, Alexander J. Johnson, declare:

1. I am an associate attorney at Kugelman Law, PC. The principal attorney at this firm is Alexander H. Kugelman, who is the counsel of record for Claimant-Appellant Ilija Matusko (“Mr. Matusko”).

2. On September 15, 2022, I emailed Merry Jean Chan, who is the attorney of record for the Government, to inform her that Mr. Matusko planned to move to (1) consolidate the appeals and briefing in Case Nos. 22-15514 and 22-16349, and (2) vacate the briefing schedule in the earlier appeal, Case No. 22-15514. I asked whether the Government would oppose that motion.

3. Ms. Chan responded that the Government would not object to the motion that I proposed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 15, 2022, in Corte Madera, California.

By: /s/ Alexander J. Johnson
ALEXANDER J. JOHNSON